S.B. CIVIL MISC. APPEAL NO.822/2007
(Smt.Shakuntala & ors. Vs. United India Insurance Co. Ltd. & anr.)

Date of Order :: 23rd February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Manoj Pareek for
Mr.Sanjay Mathur for the appellants

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Having heard learned counsel for the claimant-appellants and having perused the impugned award dated 28.10.2005 made by the Motor Accidents Claims Tribunal, Dungarpur in Claim Case No. 40/2004 this Court is satisfied that the instant appeal for enhancement of amount of compensation remains bereft of substance and does not merit admission.

In the award impugned, the Tribunal has taken up quantification of compensation for the wife and three major sons of the victim Satyendra Kumar, about 48 years in age, who expired due to the injuries received in a vehicular accident that occurred in the night intervening 17th /18th October 2003, in issue No. 3. The Tribunal has noticed the submissions of the claimants that the deceased was earning about Rs. 14-15 thousand per month from a Hotel, an STD booth and property brokerage; has referred to the tax returns of the deceased for

the three previous years and found that his income was shown at Rs.24,000/- from salary and Rs.29,750/- from business in the year 2001-2002; at Rs.16,000/- from salary and Rs.40,220/- from business in the year 2002-2003; and at Rs.16,000/- from salary and Rs.32,019/- from business in the year 2003-2004. The Tribunal has taken mean of the total income for these three years at Rs.56,663/- thus leading to monthly figure of Rs.4,721/-; and has provided for the component of future enhancement and has put an estimate on the average monthly income of the deceased at Rs.5,500/-. The Tribunal has thereafter deducted one-third on personal expenditure and with application of multiplier of 13 has assessed pecuniary loss for the claimants at Rs.5,72,052/-. In view of the fact that victim expired during treatment, though no bills were produced yet the Tribunal has allowed Rs.2,000/- towards treatment expenditure. The Tribunal has further allowed Rs.10,000/- towards funeral expenses, Rs.10,000/- to the wife of the deceased towards loss of consortium, and Rs.5,000/- to each of the three sons for the loss of guidance of their father and in this manner has assessed total loss for the claimants at Rs.6,13,052/-; and while awarding this amount as compensation has also allowed interest at the rate of 7.5% per annum.

The claimants seek to challenge the award aforesaid as being inadequate and it has been contended that the Tribunal has erred in not considering that in the last tax return the income of the deceased for about 6½ months was shown at Rs.48,019/-; and there being no rebuttal of the evidence led by the claimants, the assertion on his income ought to have been accepted and the estimate put by the Tribunal stands on the lower side.

The submissions aforesaid remain totally devoid of merits and cannot be accepted. From the evidence analysed by the Tribunal, particularly that of the tax returns, it is apparent that a major component of the net income of the deceased was derived from business; and he was asserted to be managing a hotel and so also an STD booth. By the very nature of such sources of income, a part thereof retaining itself to the claimants cannot be ruled out more particularly when three sons of the deceased are grown-up in the age group of 20-25 years. In the overall fact situation of this case, even the estimate put by the Tribunal on monthly income of the deceased at Rs.5,500/- appears to be rather excessive; and with such higher estimate on income, application of maximum multiplier of 13 with reference to the age of the deceased at 48 years has resulted only in excessive assessment of

pecuniary loss. The Tribunal has further allowed the amount towards general damages rather liberally; and then, rate of interest too, at 7.5% per annum, is not on the lower side.

In the ultimate analysis, the award in question could only be said to be rather on the higher side and rules out any scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

MK **(DINESH MAHESHWARI), J.**